

Appn. No. 10/643,046

Attorney Docket No. 10541-1871

**II. Remarks**

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested.

After entering this amendment, claims 1-21 remain pending.

***Allowable Subject Matter***

The undersigned acknowledges the Examiner's indication of the allowability of claims 17-19 and 21. The undersigned also acknowledges the Examiner's indication of the allowability of claim 20, if rewritten to overcome a rejection under 35 U.S.C. 112.

With regard to claim 20, it is submitted that the rejection under § 112 is improper since the term "E" is defined in the base claim of claim 20. As defined in the base claim, claim 17, "E" is the "percent optimal benefit gained". For convenience and expedience, this language is also being added to claim 20.

In view of the above, it is submitted that these claims are allowable and such action is requested.

***Claim Rejections - 35 U.S.C. § 112***

Claims 1-16 and 20 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite on the basis that claims 1 and 9 recite equations without defining the variables in the claims. Claims 1, 9 and 20 have been amended to specifically recite the definitions for E, R, and R<sub>a</sub>. Accordingly, it is believed that this rejection is now moot and should be withdrawn.

BRINKS  
HOFER  
GILSON  
ALIONG

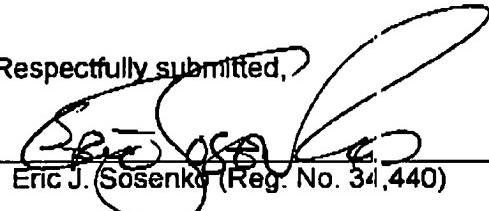
Appn. No. 10/643,046

Attorney Docket No. 10541-1871

**Conclusion**

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is requested.

Respectfully submitted,

  
Eric J. Sosenko (Reg. No. 34,440)October 27, 2004

Date

Attachment: None

BRINKS
HOFER
GILBON
ALLIANCE

-7-